IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 789 to 828 of 2004

With

FIRST APPEAL Nos.1006 to 1038 of 2003

With

FIRST APPEAL NOS.863, 864, 865, 866, 867
868 and 869 of 2004

HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE K.S.JHAVERI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL SAMBHUBHAI MADHAVLAL

Versus

DY.COLLECTOR

Appearance:

MR AMIT C NANAVATI for Original Claimants

MR HL JANI, AGP, for the State Government

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 13/04/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE K.S.JHAVERI)

1. Heard the learned counsel for the respective parties. Appeals admitted. Mr. Amit C. Nanavati and Mr. H.L. Jani, learned AGP, waive service of notice for original claimants and State Government respectively.

2. On the joint request of learned counsel for the respective parties these appeals are taken up for final hearing today.

3. Appeal Nos.789/2004 to 828/2004 are at the instance of the original claimants and First Appeal Nos.1006/2003 to 1038/2003 and First Appeal Nos.863, 864, 865, 866, 867, 868 and 869 are at the instance of the State Government under section 54 of the Land Acquisition Act read with section 96, CPC, challenging the common judgement and awards passed by the learned Extra Assistant Judge, Mehsana dated 8th January 2001, in LAR Nos.461/95 to 477/95, 1415/96 to 1418/96 and 3/97 to 21/97, under section 18 of the said Act.

3.1 The lands in question were acquired for the purpose of Dharoi Canal Project, Palanpur. The notification under section 4(1) of the Land Acquisition Act, 1894 was published on 27th June 1991 and notification under section 6 of the Act was published on 24th September 1992 in LAQ Case Case No.14/91, notification under section 4 was published on 15th April 1991 and notification under section 6 was published on 1st October 1992 in LAQ Case No.10/91, notification under section 4 was published on 12th September 1991 and section 6 notification was published on 6th November 1992 in LAQ Case No.5/91.

3.2 In pursuance of the notice under sections 9 of the Act, the claimants appeared before the Special Land Acquisition Officer and claimed Rs.20/- per square meter. The Special Land Acquisition awarded compensation for the acquired irrigated lands to the extent of Rs.1.30 per sq. mt to 1.60 sq. mt.

3.3 Being dissatisfied with the award of the Special

Land Acquisition Officer, the original claimants have filed Land Reference Case Nos.561/95 to 477/95, 1415/96 to 1418/96 and 3/97 to 21/97 before the Reference Court under section 18 of the said Act. The claimants contended that the lands are situated in developed area, the same are being put for non-agricultural use, that the lands are nearer or adjoining to the lands which are put to non-agricultural uses, that there are commercial and industrial units near the acquired lands, that there are educational institutions, water and electricity facilities are available in the village and that because of the acquisition of lands, remaining lands have become useless and thereby they have suffered loss.

3.4 On behalf of the claimants one Shri Chaturbhai Ishwarlal Patel was examined at Exh.8 wherein they have produced various judgements at Exh.11 to 14. Judgement of the same Reference Court was also produced which attained finality. On behalf of the claimants it was submitted before the Reference Court that considering the ratio of the previous judgements,more particularly judgement produced at Exh.14, and considering the one year time gap between publication of preliminary notification under section 4(1) of the Act, 10% additional rise should be awarded.

3.5 Before the Reference Court the Assistant Government Pleader for the State Government has not disputed the ratio of the judgements produced on record. However, an attempt was made to show that with regard to annual return the evidence given on the point is not cogent and convincing.

3.6 The Reference Court, after appreciation of the evidence on record, determined the market value of the land at the rate of Rs.15/- inclusive of the compensation already awarded by the Special Land Acquisition Officer. However, in clause [6] of the order the Reference Court held that the claimants are not entitled to get interest on the amount awarded under section 23(2) and 23(1-A) of the Act and also not entitled to get 12% price difference on the awarded amount under the aforesaid sections.

4. Feeling aggrieved by non-grant of interest on the awarded amount under section 23(2) and 23(1-A) of the said Act the claimants have filed First Appeal Nos.789/2004 to 828/2004, whereas feeling aggrieved by the enhanced compensation the State Government has filed the First Appeal Nos.1006/2003 to 1038/2003 and First Appeal Nos.863, 864, 865, 866, 867, 868 and 869.

5. We have heard the learned counsel for the respective parties and carefully perused the impugned judgement and awards. We have also perused the oral and documentary evidence on record to which our attention has been drawn.

5.1. The contention of the original claimants is that in clause [6] of the award, the Reference Court has not awarded interest on the amount which was awarded under sections 23(2) and 23(1-A) of the Act. Learned counsel for the original claimants has submitted that in view of the judgement of the Supreme Court in the case of N.I. Trust Vs. Vasant Rao, reported in 2002(7) SCC 657 [= AIR 2002 SC 3499 = 2003(1) GLH 140] the claimants are entitled to get interest on the amount payable to them under sub-section (1-A) of section 23 of the said Act. Mr. HL Jani, learned AGP has fairly conceded that in view of the aforesaid judgement the claimants are entitled to interest on the amount awarded under section 23(1-A) and (2) of the said Act. We, therefore, hold that the claimants are entitled to interest on the amount awarded under section 23(1-A) & (2) of the said Act.

5.2 Mr. Jani, learned AGP, for the State Government submitted that the Tribunal has committed an error in enhancing the compensation as there is no reliable and cogent evidence on record. From the record it is evident that on behalf of the claimants witness Chaturbhai Ishwarlal Patel was examined and he has produced various judgements at Exhs.11 to 14. A judgement of the very same Reference Court has also been produced before the Court which has attained finality. The Reference Court has found that in the case of the judgement produced at Exh.14, the relevant notification under section 4(1) was published on 30.7.1990 and the notification in the present case was published on 27.6.1991 and therefore there is a gap of one year which required 10% price rise as per the principle laid down by the Hon'ble Supreme Court. Therefore the Reference Court has rightly relied upon the Exh.14 and other judgements produced by the claimants and came to the conclusion that the claimants are entitled to get Rs.15/- inclusive of the compensation already awarded by the Special Land Acquisition Officer.

5.3 In view of the principles laid down in the decision in the case of Karan Singh and Ors. Vs. Union of India, reported in 1997(8) SCC 186 and in the case of Bhim Singh Vs. State of Haryana, reported in 2003 (10) SCC 529 and in the case of Second Addl. Special Land Acquisition Officer Vs. Chunilal, reported in 1999(2) GLR 1357, the Reference Court has not committed any error

in relying on the previous judgements pertaining to lands of nearby village and acquired for the same project.

5.4 Looking to the facts and circumstances of the case, we are satisfied that the impugned judgement and awards do not require any interference in these appeals. Apart from that in majority of the appeals the claims are less than Rs.25000/-, and it has been the consistent practice of this Court not to enter into the merits of those appeals wherein the claim in appeal is a petty claim, and claims upto Rs.25000/- have been quantified as petty claims.

6.1 In the result, the appeals filed by the original claimants are partly allowed. It is held that the claimants are entitled to get interest on the amount awarded under section 23(1-A) and (2) of the Act. The common judgement and awards of the Reference Court is modified to the aforesaid extent. Decree shall be drawn accordingly. No order as to costs.

6.2 The appeals filed by the State Government are dismissed. No order as to costs.

[KSHITIJ R. VYAS, J.]

[K.S. JHAVERI, J.]

ar